APPENDIX A

Case No. 18-1635

May 25, 2018,
Opinion
United States Court of Appeals

No. 18-1035

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

KAHRI SMITH,

Petitioner-Appellant,

v.

BONITA J. HOFFNER,

Respondent-Appellee.

FILED
May 25, 2018
DEBORAH S. HUNT, Clerk

O R D E R

Kahri Smith, a pro se Michigan prisoner, appeals the judgment of the district court denying his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Smith's notice of appeal is construed as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b)(2). Smith has filed a motion seeking to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

A jury convicted Smith of second-degree murder for beating his uncle, Eric Smith ("Eric"), to death in his uncle's home. The trial court imposed a sentence of 240 to 480 months. Smith presented an insanity defense at trial, claiming that he had been drinking and using drugs before the altercation. Smith appealed, claiming that he was denied his right to present a defense when the trial court refused to allow him to present evidence of self-defense or to instruct the jury on self-defense. He also claimed that certain offense variables were inaccurately scored. The Michigan Court of Appeals ultimately affirmed Smith's conviction but agreed that Smith's sentence had been erroneously calculated and remanded for resentencing. *People v. Smith*, No. 309407, 2013 WL 6670897 (Mich. Ct. App. Dec. 17, 2013), *perm. appeal denied*, 847 N.W.2d

513 (Mich. 2014) (mem.). On remand, the trial court imposed the same sentence of 240 to 480 months of imprisonment.

Smith then filed this 28 U.S.C. § 2254 habeas corpus petition, raising one claim: the trial court erred by barring Smith from presenting a self-defense theory or jury instruction on that theory, depriving him of his rights to present a defense to a fair trial. He also filed a motion to stay the habeas proceedings so that he could raise unexhausted claims in state court. After consideration, the district court denied Smith's motion for a stay and dismissed the petition without prejudice.

Approximately five months later, Smith moved to reopen his case on the single exhausted claim presented in his original habeas petition. The district court granted the motion and considered his single claim. The district court concluded that habeas relief was not warranted, however, because the state court's adjudication of the claim was not contrary to clearly established federal law. The district court denied Smith's petition and denied a COA.

To obtain a COA, a petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). "[A] COA does not require a showing that the appeal will succeed," *id.* at 337; it is sufficient for a petitioner to demonstrate that "the issues presented are adequate to deserve encouragement to proceed further." *Id.* at 327 (citing *Slack*, 529 U.S. at 484).

It is well-established that a criminal defendant has a right to present a defense, which includes the right to offer the testimony of witnesses and to present the defendant's version of the facts. *Washington v. Texas*, 388 U.S. 14, 19 (1967). However, "[t]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 410 (1988). A State violates the right to present a defense only when it prevents a defendant from introducing evidence essential to his defense. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). And habeas relief is

warranted only if the state-court determination is so "fundamentally unfair" that it deprives a defendant of due process. *Bey v. Bagley*, 500 F.3d 514, 519-20 (6th Cir. 2007).

Smith first asserted that the trial court erred by failing to allow him to present sufficient evidence about Eric's reputation for aggressiveness. The record demonstrates that defense counsel questioned Smith's grandmother (Eric's mother) about an incident that Eric had with his own son where Eric ended up in the hospital. The trial court sustained in part an objection by the prosecution, limiting defense counsel's questions only to any history between Smith and Eric. Smith's grandmother was recalled the next day by defense counsel who asked her if Eric had a history of aggressive behavior or could be described as an "agitator." She said that it was not fair to characterize him that way and that it was not true that he often got in fights with other family members. Defense counsel then tried to elicit an answer from her that Eric had once thrown a brick when the prosecution objected. After a discussion outside of the jury, the trial court ruled that counsel could not pursue the line of questioning about self-defense.

To establish self-defense under Michigan law, a defendant must show that: (1) he honestly believed that he was in danger, (2) the danger he feared was death or serious bodily harm, (3) the action taken appeared at the time to be immediately necessary, and (4) defendant was not the initial aggressor. *People v. Guajardo*, 832 N.W.2d 409, 413 (Mich. Ct. App. 2013). The evidence presented at trial did not support this defense. Rather, undisputed evidence established that Eric had locked Smith out of his house; Smith kicked in a window and a door of Eric's house in order to gain entry; Eric called his mother and his son asking for help when Smith broke into his home; there was no evidence that Eric had a weapon or threatened Smith; Smith weighed approximately seventy-five pounds more than Eric; and Eric had defensive injuries on his wrists and was found unconscious near a side door of his home. *Smith*, 2013 WL 6670897, at *1-2. Given that the testimony from Smith's grandmother did not contradict this evidence and, in fact, refuted the allegation that Eric was aggressive, there is no indication that any further testimony on her part would have been sufficient for Smith to assert a self-defense

claim. Reasonable jurists would not therefore debate that Smith's right to present a defense was not infringed by any limitation on his grandmother's testimony.

Moreover, reasonable jurists would not debate that Smith's statements to the police did not support self-defense. Smith told an officer that he remembered punching Eric once and then Eric's son and another man came over and started "punching, kicking, and stomping" him. Smith told the officer that he did not remember having an argument with Eric, and he could not remember what led up to him punching Eric. In fact, Smith's entire theory of self-defense was based on his answer of "possibly" to the officer's question as to whether Eric assaulted him. Smith stated that he could not remember the incident because he got knocked out by Eric's son and "was drinking beer and smoking weed." Because Smith could not remember the events leading to the altercation, his statements offered no support for a self-defense claim. Given that no other evidence supported a self-defense theory, Smith was not denied his right to present a defense.

Nor could reasonable jurists debate that Smith's right to a fair trial was not infringed when the trial court refused to provide a self-defense instruction to the jury. A defendant "is entitled to a self-defense instruction if there is evidence to support his theory." *Taylor v. Withrow*, 288 F.3d 846, 852 (6th Cir. 2002) (quoting *Clemmons v. Delo*, 177 F.3d 680, 695 (8th Cir. 1999)). Because there was no evidence to support the theory in this case, reasonable jurists would not debate that the trial court did not err by failing to instruct the jury on self-defense.

Smith's application for a COA is **DENIED**. His motion to proceed in forma pauperis on appeal is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

United States District Court Opinion, No. 15-cv-11648

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Kahri Smith,

Petitioner,

Case No. 15-cv-11648

v.

Judith E. Levy
United States District Judge

Bonita Hoffner,

Mag. Judge Anthony P. Patti

Respondent.

_____/

OPINION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF APPEALABILITY

Michigan prisoner Kahri Smith ("Petitioner") filed this habeas corpus petition under 28 U.S.C. § 2254. Petitioner, who is proceeding *pro se*, was convicted of second-degree murder, Mich. Comp. Laws § 750.317, and sentenced to 20 to 40 years imprisonment. Petitioner seeks habeas relief on the ground that he was denied his right to present a defense and to a fair trial when the trial court barred presentation of a self-defense theory in the case.

For the reasons that follow, the Court denies the petition for a writ of habeas corpus. The Court also denies a certificate of appealability.

I. Background

Petitioner's convictions arise from the beating death of Petitioner's uncle, Eric Smith. The Michigan Court of Appeals summarized the evidence adduced at trial leading to Petitioner's convictions as follows:

> On August 4, 2010, defendant beat his uncle, Eric Smith, to death. Smith had locked defendant out of his house and defendant was attempting to break in to Smith's house. While Smith was telephoning people requesting help, defendant kicked in a basement window, and then he kicked in a door, entered Smith's house, and beat him in the head and face. When Smith's son and daughter arrived minutes later, they found Smith bleeding from his face and unconscious near an open side door to the house. When Smith's son asked defendant what happened to his dad, defendant answered: "I killed that motherfucker." Smith was taken to the hospital where he died.
>
> The medical examiner testified that Smith died from several blunt-force head wounds. Smith had two black eyes, abrasions on his forehead, and both ears were bruised and had extensive swelling. He also had bruises on the top of both shoulders and on the backs of both wrists. The mucous membranes in Smith's mouth had multiple tears. An internal examination revealed that Smith had extensive hemorrhagic infiltration of the soft tissues of the scalp, his brain was extensively swollen, and he had a subdural hemorrhage, as well as multiple patches of hemorrhage scattered throughout the surface of his brain. The medical

> examiner testified that Smith's injuries were consistent with being struck by fists and that Smith "suffered extensive blows throughout the left side of his head." Defendant's defense to the charge was legal insanity, which the jury rejected. Defendant had requested a self-defense jury instruction, which the trial court denied.

People v. Smith, No. 309407, 2013 WL 6670897, *1 (Mich. Ct. App. Dec. 17, 2013).

Petitioner filed an application for leave to appeal in the Michigan Court of Appeals, raising claims that the trial court denied him his right to present a defense and that the trial court incorrectly scored several offense variables. The Michigan Court of Appeals denied Petitioner's application for leave to appeal "for lack of merit in the grounds presented." *People v. Smith*, No. 309407 (Mich. Ct. App. Nov. 28, 2012). Petitioner then filed an application for leave to appeal in the Michigan Supreme Court. The Michigan Supreme Court, in lieu of granting leave to appeal, remanded the case to the Michigan Court of Appeals for further consideration. *People v Smith*, 494 Mich. 874 (2013).

On remand, the Michigan Court of Appeals affirmed Petitioner's conviction, but vacated the sentence and remanded for resentencing. *People v. Smith*, No. 309407, 2013 WL 6670897 (Mich. Ct. App. Dec. 17,

2013). Petitioner filed an application for leave to appeal in the Michigan Supreme Court, raising the claim that he was denied his right to present a defense. The Michigan Supreme Court denied leave to appeal. *People v. Smith*, 496 Mich. 859 (2014). On July 30, 2014, Petitioner was resentenced in the trial court. The trial court imposed the same sentence of 20 to 40 years imprisonment.

Petitioner then filed this habeas corpus petition. He raises a single claim:

> The trial court reversibly erred in barring the defense from presenting a self-defense theory in the case, and thus effectively precluding any request for an instruction on that defense theory, contrary to Mr. Smith's constitutional rights to present a defense and to a fair jury trial.

II. Legal Standard

Title 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, imposes the following standard of review for habeas cases:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-406 (2000). An "unreasonable application" occurs when "a state-court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409. A federal habeas court may not "issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 411.

The Supreme Court has explained that a "federal court's collateral review of a state-court decision must be consistent with the respect due state courts in our federal system." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). Thus, the AEDPA "imposes a highly deferential standard

for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010). A "state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). The Supreme Court has emphasized "that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id.* at 102.

Furthermore, pursuant to § 2254(d), "a habeas court must determine what arguments or theories supported or ... could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision" of the Supreme Court. *Id.* Habeas relief is not appropriate unless each ground that supported the state-court's decision is examined and found to be unreasonable under the AEDPA. *See Wetzel v. Lambert*, 565 U.S. 520, 525 (2012).

A state court's factual determinations are presumed correct on federal habeas review. *See* 28 U.S.C. § 2254(e)(1). A habeas petitioner

may rebut this presumption of correctness only with clear and convincing evidence. *Id.*; *Warren v. Smith*, 161 F.3d 358, 360-361 (6th Cir. 1998). Moreover, habeas review is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

III. Discussion

Petitioner claims that the trial court denied him his right to present a defense and to a fair trial by denying his request to present evidence of self-defense and declining to instruct the jury on self-defense.

The right of a defendant to present a defense has long been recognized as "a fundamental element of due process of law." *Washington v. Texas,* 388 U.S. 14, 19 (1967). It is one of the "minimum essentials of a fair trial." *Chambers v. Mississippi,* 410 U.S. 284, 294 (1973). But the Supreme Court also recognizes that "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *Nevada v. Jackson*, 569 U.S. 505, 133 S. Ct. 1990, 1992 (2013) (quotation omitted). A defendant "does not have an unfettered right to offer evidence that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence."

Montana v. Egelhoff, 518 U.S. 37, 42 (1996). State rules excluding evidence from criminal trials "do not abridge an accused's right to present a defense so long as they are not arbitrary or disproportionate to the purposes they are designed to serve." *United States v. Scheffer*, 523 U.S. 303, 308 (1998) (internal quotation omitted). "A defendant's interest in presenting...evidence may thus bow to accommodate other legitimate interest in the criminal trial process." *Id.* The exclusion of evidence has been found to be "unconstitutionally arbitrary or disproportionate only where it has infringed upon a weighty interest of the accused." *Id.*

Petitioner raised his claim that he was denied the right to present a defense on direct appeal in state court. The Michigan Court of Appeals, in a comprehensive and well-reasoned opinion, found no constitutional violation. *Smith*, 2013 WL 6670897 at *1-*2. The Michigan Court of Appeals held, in pertinent part:

> [A] defendant must conform to the rules of procedure and evidence in presenting his defense. *Id.* Michigan's self-defense law is set forth at MCL 780.972, which provides in pertinent part:
>
> > (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual

> anywhere he or she has the legal right to be with no duty to retreat if the following applies:
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

The defendant bears the burden of producing some evidence to establish a prima facie case of self-defense. *People v. Dupree*, 486 Mich. 693, 709-710; 788 N.W.2d 399 (2010).

In this case, the undisputed evidence included that defendant did not have the legal right to be in [Eric] Smith's house, [Eric] Smith did not want defendant in his house, and defendant kicked in a door in order to enter [Eric] Smith's house at which time he beat [Eric] Smith, inflicting fatal injuries. Further, there was no evidence to support a claim that defendant honestly and reasonably believed that the use of deadly force against [Eric] Smith was necessary to prevent defendant's imminent death or imminent great bodily harm. [Eric] Smith had defensive injuries on the backs of his wrists, was 5' 10" tall, and weighed 114 pounds, and was found unconscious near a side door to the house. Defendant was 5' 9" tall and weighed 190 pounds. There was no evidence that [Eric] Smith had any weapon or threatened defendant with a weapon. Because the evidence did not support a self-defense theory, defendant was not denied his constitutional right to present this defense and the trial court did not abuse its discretion when it precluded defendant from raising the defense and in refusing to provide a self-defense instruction to the jury. *See Gillis*, 474 Mich. at 113; *Hine*, 467 Mich. at 250; *Kurr*, 253 Mich. App. at 327. Thus, this issue is without merit.

Smith, 2013 WL 6670897 at *1-2.

The state court's decision is neither contrary to Supreme Court precedent nor an unreasonable application of federal law or the facts. First, Petitioner argues that the trial court did not allow him to explore his uncle's reputation for aggressiveness to support a self-defense theory. (Dkt. 1, at 8-9). Defense counsel questioned Edith Smith, Petitioner's grandmother and Eric Smith's mother, about his reputation as an "agitator" and an altercation that Eric Smith had with his own son. (Dkt. 7-7, at 46-47; Dkt. 7-8, at 32-33). After allowing defense counsel some leeway in this questioning, the trial court sustained the State's objection and limited this line of questioning. (Dkt. 7-8, 33-34). The trial court reasoned that the testimony did not support a self-defense theory because no relevant evidence had been presented. (*Id.* at 34-35).

There is no evidence that Eric Smith's mother would have provided testimony favorable to the defense if the defense questioning had continued. In her limited testimony on this subject, she testified that Eric Smith had required hospitalization after being beaten by his own son. (Dkt. 7-7, at 46). This hardly supports a theory that Eric Smith himself was aggressive and was therefore irrelevant to

Petitioner's defense. The limitations placed on this testimony, therefore, did not infringe on a weighty interest of the accused.

With respect to a self-defense jury instruction, the defense presented an insanity defense. Petitioner's brief reference in his custodial statement to "possibly" having been assaulted by his uncle did not present a defense of self-defense under Michigan law, particularly in light of Petitioner's statement that he could not clearly remember what had happened because he had been drinking and using drugs before the altercation. As pointed out by the state appellate court, Petitioner forced entry into Smith's home, Smith indicated his need for immediate help in phone calls to his mother and his son, and there was no indication that Smith attempted to use a weapon against Petitioner. The trial court was reasonable in concluding that the evidence did not warrant a self-defense instruction and therefore did not deprive Petitioner of his constitutional right to defend himself. The Michigan Court of Appeals' decision on this claim was not objectively unreasonable and habeas relief is denied.

IV. Conclusion

For the reason set forth above, the Court will deny the petition for

a writ of habeas corpus.

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability ("COA") is issued under 28 U.S.C. § 2253. Rule 11 of the Rules Governing Section 2254 Proceedings requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000) (citation omitted).

The Court finds that jurists of reason would not debate the conclusion that the petition fails to state a claim upon which habeas corpus relief should be granted, and denies a certificate of appealability.

The Court further concludes that Petitioner will not be granted leave to proceed on appeal *in forma pauperis* because any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

V. Order

Accordingly, the Court DENIES WITH PREJUDICE the petition for a writ of habeas corpus. (Dkt. 1.)

The Court further DENIES a certificate of appealability and leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Dated: November 28, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 28, 2017.

s/Shawna Burns
SHAWNA BURNS
Case Manager

APPENDIX D

PEOPLE V SMITH
CASE NO. 309407

2013 MICH APP 2053

Currently Unavailable

APPENDIX C

PEOPLE V SMITH
CASE NO. 11000477
WAYNE COUNTY CIRCUIT COURT

Currently Unavailable